

KENNETH F. SANTOR

IBLA 73-327

Decided October 5, 1973

Appeal from decision (W-21914) of Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of an oil and gas lease.

Affirmed.

Oil and Gas Leases: Reinstatement! ! Oil and Gas Leases: Rentals

Where an appellant contends that an earthquake forcing reconstruction of his place of business two years after that cataclysmic event is an extenuating circumstance causing justifiable delay in a rental payment, a decision of the State Office denying reinstatement will be affirmed due to his failure to prove sufficient proximity and causality.

Oil and Gas Leases: Reinstatement! ! Oil and Gas Leases: Rentals

The assertion by an appellant that he detrimentally relied upon receipt of a courtesy notice, which was possibly delayed in transit, is not a justifiable excuse for failure to pay timely the rental on the anniversary date.

APPEARANCES: James R. Learned, Esq., Cheyenne, Wyoming, for appellant.

OPINION BY MR. FISHMAN

Kenneth F. Santor has appealed from a decision of the Wyoming State Office, Bureau of Land Management, dated February 28, 1973, which denied his petition for reinstatement of an oil and gas lease (W-21914) which terminated December 31, 1972.

The record shows that the rental for this oil and gas lease was due in the Wyoming State Office on or before January 2, 1973. It was received January 16, 1973. Thus, on January 16, 1973, the State Office sent a termination notice to appellant. On January 29, 1973, appellant filed with the State Office a statement that his place of business had suffered an earthquake in February of 1971, and that due to new construction, his 1973 rental billing notice from the Bureau was misplaced and not relocated until January 9, 1973. Therefore, he requested reinstatement of his lease, suggesting that P.L. 91-245 (30 U.S.C. § 188(c) (1970)) affords a grace period of twenty days.

The Wyoming State Office, in the decision appealed here, noted that "justifiable delay" in making rental payments would excuse their untimeliness. 43 CFR 3108.2-1(c)(1). The State Office found that though the appellant's business building was destroyed by an earthquake in February of 1971, he timely made his 1972 rental payment for this lease on January 2, 1972. It noted that Louis Samuel, 8 IBLA 268 (1972), defines "justifiable delay" as recognizable "only when sufficiently extenuating circumstances are present so as to affect the lessee's actions." It also noted that rental billing notices are only sent as a courtesy and that even where the notice is never received, the lessee's duty to pay the required rental on or before the day due is not excused. H. L. Patterson, A-27745 (November 19, 1958). The lack of justifiable delay and the irrelevance of reliance on the courtesy billing notice were therefore the reasons for the decision below.

In his appeal, Santor contends that due to the earthquake of February 1971, his building was razed in December 1971, and reconstruction begun in March 1972. Said reconstruction, "confused" by major structural revisions required by the local building code, continued through the end of 1972. He also contends that "\* \* \* an earthquake and the unavoidable confusion of reconstruction are clearly extenuating circumstances causing and explaining the justifiable delay in rental payment \* \* \*" within the standards of Louis Samuel, *supra*. Additionally, he claims that possibly the billing notice, due to frequent delivery delays at a year's end, was not received in time to make payment before the anniversary date, "even under normal business circumstances." He notes that he tendered payment "[p]romptly upon finding the notice," and that, notwithstanding H. L. Patterson, *supra*, he is

\* \* \* entitled to rely on the long! standing business practice of the lessor [the Bureau of Land Management] as a normal basis for planning and remitting lease rental payments and that the lessor knows of or has reason to expect such reliance.

He contends that he has relied on an automatic machine operation, a "standard business procedure," and possibly was thereby induced to delay payment until he received a billing notice. For these reasons, he feels the Department should be required to show clearly timely receipt of the billing notice or be equitably estopped from asserting a termination or denying reinstatement. 1/

In the Code of Federal Regulations, the subjects of automatic termination and reinstatement are clearly set forth. Failure to pay timely a rental for an oil and gas lease in situations such as the one at hand automatically terminates the lease "by operation of law." 43 CFR 3108.2-1(a). A lease terminated thusly may be reinstated upon petition to an "authorized officer" if the officer is satisfied "\* \* \* that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee \* \* \*." 43 CFR 3108.2-1(c)(1). That section also requires that the deficiency in rental be tendered to the State Office within 20 days after the due date, as a condition precedent to filing a petition for reinstatement, which is discrete from a "grace period."

As was stated in Louis Samuel, supra, though "justifiable" may have an equitable ring, it only refers to that "\* \* \* limited number of cases where, owing to factors ordinarily outside of the individual's control, the reasonable diligence test could not be met." Id. at 274. However, though natural disasters (such as earthquakes) are there used as an example of uncontrollable factors, in the instant case the earthquake of February 1971 lacks "sufficient proximity and causality," Id., to excuse appellant's failure to meet his rental obligation on or before January 2, 1973. 2/

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1/ In this letter he reasserted that he had assumed he had a twenty! day grace period in which to pay his annual rental, pursuant to P.L. 91-245, 30 U.S.C. § 188(c) (1970). The pertinent regulation provides for reinstatement on three conditions:

- a) the payment or tender of rental within twenty days of the anniversary date, and
- b) a showing to the satisfaction of the "authorized officer" that failure to pay or tender on the anniversary date "was either justifiable or not due to a lack of reasonable diligence on the part of the lessee," and
- c) the timely filing of a petition for reinstatement. 43 CFR 3108.2-1(c)(1).

2/ His timely remittance of the requisite rental the previous year further fortifies this conclusion.

In regard to appellant's asserted reliance on the supposed BLM "business practice" to provide billing notices to oil and gas lessees, he fails to counter even the plain language in H. L. Patterson, A-27745 (November 19, 1958). There, as in the instant case, "\* \* \* the record clearly indicates that the appellant was aware of the fact that his leases were still in effect and he is chargeable with the knowledge that the lease terms provided that annual rental was due." Id. at 2. More simply, reliance upon receipt of such a courtesy notice is not a justifiable excuse for failure to timely pay the rental. Louis J. Patla, 10 IBLA 127, 128 (1973); see Norman K. Husted, 12 IBLA 341 (1973).

Accordingly, the appellant's petition for reinstatement was properly denied and pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman  
Member

We concur:

Martin Ritvo  
Member

Newton Frishberg  
Chairman

